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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

ELECTRONIC FRONTIER FOUNDATION,)	NO. C 07-5278 EMC
)	
Plaintiff,)	MEMORANDUM OF POINTS AND
)	AUTHORITIES IN SUPPORT OF
v.)	APPLICATION FOR ORDER
)	SHORTENING TIME FOR
OFFICE OF THE DIRECTOR OF NATIONAL)	PRELIMINARY INJUNCTION
INTELLIGENCE,)	HEARING
)	
Defendant.)	Courtroom:
)	
)	
)	

Plaintiff Electronic Frontier Foundation ("EFF") moves this Court for an order shortening time to November 20, 2007 or as soon thereafter as is practicable for a hearing on Plaintiff's Motion for Preliminary Injunction. Ample grounds and authority exist to issue an order shortening

1 time. Further, the requested schedule will not pose a hardship to Defendant Office of the Director
2 of National Intelligence (“ODNI”), and may result in the public release of documents relevant to an
3 important matter of public concern currently being debated in Congress.

4 **I. THE COURT HAS AUTHORITY TO SHORTEN TIME TO HEAR A MOTION FOR**
5 **PRELIMINARY INJUNCTION**

6 Rule 6(d) of the Federal Rules of Civil Procedure explicitly fixes the time for hearings on
7 noticed motions “unless a different period is fixed . . . by order of the court.” Fed. R. Civ. P. 6(d).
8 That same rule authorizes a party to seek a different time period upon an *ex parte* application. *Id.*
9 The Court, pursuant to Rule 6(d), may shorten the time for hearing a motion. *E.g., United States v.*
10 *Fitch*, 472 F.2d 548, 549 n. 5 (9th Cir. 1973), *cert. denied*, 410 U.S. 914 (1973) (shortened time
11 regarding civil contempt of grand jury witnesses). Thus, this Court has the authority to shorten the
12 time for a hearing on EFF’s concurrently filed Motion for Preliminary Injunction.

13 **II. SHORTENED TIME IS APPROPRIATE UNDER THESE CIRCUMSTANCES**

14 This lawsuit seeks to compel ODNI to process the requested records expeditiously under
15 the FOIA because they involve a matter about which there is an “urgency to inform the public
16 about actual or alleged Federal Government activity,” and they are sought by “a person primarily
17 engaged in disseminating information.” ODNI has conceded that EFF’s FOIA requests satisfy this
18 statutory standard, and are legally entitled to expedited processing. Notwithstanding ODNI’s
19 purported decision to expedite the processing of EFF’s FOIA requests, however, the agency has to
20 date neither completed the processing of EFF’s requests, nor informed EFF of an anticipated date
21 for the completion of the processing of the requests.

22 A hearing before this Court on shortened time is necessary because two pieces of legislation
23 recently introduced in Congress may imminently amend the Foreign Intelligence Surveillance Act:
24 the RESTORE Act of 2007, H.R. 3773, and the Foreign Intelligence Surveillance Act of 1978
25 Amendments Act of 2007, S. 2248. The Senate bill, which was introduced and approved on
26 October 18, 2007 by the Senate Select Committee on Intelligence, purports to require dismissal of
27 any state or federal lawsuit against a carrier for facilitation of government surveillance if the
28 Attorney General certifies to the court that the company was assisting in certain intelligence

1 activity authorized by the President. Senate Majority Leader Harry Reid has publicly indicated that
2 he expects the bill to reach the Senate floor by mid-November. This vote may be delayed for various
3 reasons. Still, because these two new proposals aim to replace a stopgap measure that will expire
4 in February of 2008, we anticipate Congress will decide on the proposed legislation, including the
5 immunity provision, extremely soon.

6 A hearing on shortened time is necessary also because EFF's repeated efforts to negotiate a
7 production schedule with ODNI have been unsuccessful. On October 22, 2007, EFF attorney
8 Marcia Hofmann phoned Andrew I. Warden, Trial Attorney at the Department of Justice, and
9 informed him that EFF had filed the complaint in this matter on October 17, 2007. Mr. Warden is
10 counsel in a similar but unrelated lawsuit between EFF and the Department of Justice currently
11 pending in the District Court for the District of Columbia, *Electronic Frontier Foundation v. Dep't*
12 *of Justice*, No. 07-1732 (D.D.C. filed Sept. 27, 2007). Mr. Warden told Ms. Hofmann that he
13 anticipated that he would be counsel for Defendant in this action and had obtained a copy of the
14 October 17, 2007 complaint.

15 During this conversation, Ms. Hofmann told Mr. Warden that EFF wanted to explore the
16 possibility of negotiating a processing schedule for EFF's FOIA requests to eliminate the need for
17 further action in this case. She explained, however, that legislation had been introduced and
18 approved on October 18, 2007 in the Senate Select Committee on Intelligence that is closely
19 related to the subject matter of the records underlying this case. Ms. Hofmann told Mr. Warden
20 that this development has significantly increased the urgency for the public to obtain the records
21 sought from ODNI, and that EFF would consider seeking preliminary injunctive relief in the
22 absence of an agreement to process EFF's requests in a timely manner. Mr. Warden told Ms.
23 Hofmann he would consult with his client.

24 On October 26, 2007, Ms. Hofmann conferred with Mr. Warden by phone and informed
25 him of EFF's intention to move for a preliminary injunction and to seek an order to request
26 shortened time for a hearing on the motion if EFF and ODNI had not reached an agreement by
27 Monday, October 29, 2007. As of this filing, no documents have been produced, and Mr. Warden
28

III. CONCLUSION

By /s/
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